

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 861 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

DINESHCHANDRA LALJIBHAI SHINGALA

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Appearance:

Mr. S.R.Divetia, A.P.P. for the appellant.

Respondent served.

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CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

Date of decision: 22/07/96

ORAL JUDGEMENT: (Panchal,J.) :

The judgment and order dated May 20,1988 rendered by the learned Special Judge, Rajkot in Special Case no.3/86 acquitting the respondent under section 161 of the Indian Penal Code as well as section 5(2) of the Prevention of Corruption Act,1947 are assailed by the State of Gujarat in this appeal,which is filed under

section 378 of the Code of Criminal Procedure, 1973.

2. The prosecution case in brief is that the respondent at the relevant time was serving as Junior Assistant with Gujarat Electricity Board and was posted at its Rajkot Office. The respondent was as such a public servant. The complainant Chhaganlal Panchabhai was running a small shop near Shitala Mandir on Bedipara road, Rajkot and was selling soft drinks. The shop in which the complainant was doing business was rented one and he was provided with electric connection bearing no.98943. A separate meter was also installed for recording consumption of electricity. He used to receive bill for two months. For the months of March/April, 1985 he received a bill for an amount of Rs.95.91 ps. The bill was handed over to him in the month of May by Meter Reader. He tried to know from the Meter Reader as to why he had received bill of higher amount, as every month he used to receive bill of Rs.15/to Rs.20/-. It is his case that on instructions of Meter Reader he went to the Office of Gujarat Electricity Board situated on Aji Vasahat road near Milk Dairy, Rajkot and after making inquiry, met the respondent and made grievance about the amount mentioned in the bill. Thereupon the respondent asked him not to make payment of amount mentioned in the bill and assured the complainant that he would see him at his shop. It is the prosecution case that on May 3, 1985 the respondent met the complainant at his shop and demanded an amount of Rs.25/ from the complainant for correcting the amount mentioned in the bill. Thereupon the complainant informed the respondent that he had no money and, therefore, the respondent instructed the complainant to come in the Office on the next day i.e. on 4.5.1985 with money and bill. On 4.5.1985, the complainant did not meet the respondent at his office, but went to the office of Anti Corruption Bureau and lodged his complaint. After recording of complaint was over, Police Inspector Mr. Manjaria, who was then discharging duties as Police Inspector, A.C.B., summoned two panch witnesses. In presence of panch witnesses, the complainant produced a note having denomination of Rs.20/- and another note having denomination of Rs.5/-. The notes were smeared with anthracene powder in presence of panchas. The smeared notes, hands of the complainant & panch witnesses etc. were viewed under an ultra violet lamp and the presence of anthracene powder was seen. Thereafter the notes which were treated with anthracene powder were placed in the pocket of bushirt worn by the complainant and the complainant was instructed to hand over the notes to the respondent on demand. Thereafter raiding party which also consisted of police personnel

kept a watch in the vicinity of shop of the complainant. The raiding party waited till 8.00 p.m., but as the respondent did not turn out, the raid was wound up and Police Inspector Mr.Manjaria instructed the complainant to contact him again in case demand was made by the respondent.

3. It is the case of the complainant that the respondent contacted him at his shop on May 9,1985 and demanded the amount. The complainant thereupon informed the respondent that he had no money. Therefore, the respondent instructed the complainant to come to his office on May 10,1985 and give the amount. The complainant therefore, went to the Office of Anti-Corruption Bureau on May 10,1985 at about 10.30 a.m. and lodged his complaint. After summoning panch witnesses and usual experiment of anthracene powder, preliminary panchnama was made and a trap was laid. Panch no.1 i.e. Govindbhai Kanjibhai Solanki was instructed to be with the complainant throughout in order that he might see passing of currency notes and hear what transpired between the complainant and the respondent. The prosecution has alleged that the respondent was not in the office at the time when the complainant accompanied by panch witness had gone to the office of the respondent and the respondent had come to the office at about 3.00 p.m. On seeing the complainant, the respondent stopped his two wheeler and asked the complainant as to whether he had brought the amount or not. On the complainant reply in affirmative, the respondent instructed him to come in the office and give amount. The prosecution case is that in the office, the respondent took out bill from his pocket wherein the amount of Rs.95/- was corrected to Rs.15/- and handed it over to the complainant which was placed by him in one of the pockets of his trousers. Thereafter the respondent demanded the amount. Therefore, the complainant took out notes of Rs.25/- and handed them over to the respondent, who after counting the same with both the hands placed them in the pocket of bushirt worn by him. On acceptance of money, the complainant came out the office and gave signal, as a result of which, Police Inspector Mr.Manjaria accompanied by other police personnel rushed in the office of the respondent. On instructions of Police Inspector Mr.Manjaria, panch Govindbhai Solanki took out notes from the pocket of the bushirt worn by the respondent. Fingers of both the hands and bushirt worn by the respondent were seen in the light of ultra-violet lamp and light blue fluorescent colour was noticed. The investigating officer also seized bill as well as

relevant page from Ledger. After usual investigation, sanction to prosecute was applied for. The competent authority granted sanction as postulated under section 6 of the Act. The respondent was thereafter chargesheeted under section 161 of the Indian penal Code as well as section 5(2) of the Prevention of Corruption Act, 1947 in the Court of learned Special Judge, Rajkot.

4. The learned Special Judge framed charge at exh.5 against the respondent under section 161 of the Indian penal Code and section 5(2) of the Prevention of Corruption Act. The charge was read over and explained to the respondent, who pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined following witnesses in order to prove its case against the respondent:-

- (1) Chhaganlal Panchabhai, P.W.1, exh.10
- (2) Govindbhai Kanjibhai Solanki, P.W.2, exh.19
- (3) Danabhai Najibhai Manjaria, P.W.3, exh.21.

The prosecution also relied on documentary evidence such as complaint, which was lodged by Chhaganlal Panchabhai patel, panchnama, sanction to prosecute, electricity bill, relevant page of Ledger etc. to prove its case against the respondent.

5. After recording of evidence of prosecution witnesses was over, learned Special Judge recorded statement of the respondent under section 313 of the Code of Criminal Procedure, 1973. The respondent in his statement under section 313 stated that the case against him was false. He denied that he had demanded illegal gratification from the complainant either on May 3, 1985 or May 9, 1985. He asserted that because of mistakes which were found in the bill, the bill was corrected and handed over to the complainant, but he had not accepted Rs.25/- by way of illegal gratification from the complainant. He further pleaded that the complainant attempted to give Rs.25/- as tip to him, but he did not accept the same. The respondent did not lead any evidence in his defence.

6. After appreciating the evidence on record, learned Judge recorded following conclusions :-

- (i) At the relevant time the respondent was a public servant.
- (ii) Sanction to prosecute is legal and valid.
- (iii) Evidence of the complainant stands contradicted in material particulars by his complaint and having regard to his antecedents implicit faith cannot be placed on his evidence.

- (iv) It is not proved by the prosecution that the respondent had demanded Rs.25/- by way of illegal gratification either on May 3,1985 or May 9,1985.
- (v) The investigating officer failed to secure presence of independent panch witnesses.
- (vi) Though the respondent has not proved that the notes smeared with antracene powder were thrust in the pocket of his bushirt, the prosecution has failed to prove that the respondent accepted Rs.25/- by way of illegal gratification on May 10,1985.

7. In view of the above referred to conclusions, the learned Judge acquitted the respondent under section 161 of the Indian Penal Code and section 5(2) of the Prevention of Corruption Act, giving rise to the present appeal.

8. Mr. S.R.Divetia, learned A.P.P. has taken us through the entire evidence on record. The learned Counsel for the appellant submitted that the evidence of the complainant is corroborated by the contents of his complaint and, therefore, the impugned judgment should be set aside. On behalf of the State Government, learned Counsel pleaded that the evidence of the complainant is also corroborated by the evidence of panch witnesses as well as evidence of the investigating officer and, therefore, the appeal should be accepted and the respondent should be convicted under section 161 of the Indian Penal Code as well as section 5(2) of the Prevention of Corruption Act,1947.

9. Though the respondent is duly served, he has neither appeared in person nor through Advocate.

10. On reading the evidence of the complainant it becomes clear that the complainant has not stated as to on which date he had seen the respondent first time in his office. The complainant has clearly stated in his evidence that on May 3,1985 the respondent had come to his shop and demanded Rs.25/- and when he informed the respondent that he had no money, the respondent had asked him to come to his office on May 4,1985 and bring the amount as well as bill. In normal course of conduct, raid would have been arranged at the office of the respondent on May 4,1985 and not near the shop of the complainant because the complainant has clearly stated that on May 4,1985 he had not seen the respondent and had gone to the office of A.C.B. for the purpose of lodging

complaint. With regard to his assertion that he had not seen the respondent in his office on May 4, 1985 the complainant stands completely contradicted with his complaint wherein it is specifically mentioned that he had seen the respondent in his office on May 4, 1985. Thus, demand of Rs.25/- by way of illegal gratification from the complainant by the respondent becomes highly doubtful. In our view, the learned Judge cannot be said to have committed an error in coming to the conclusion that prosecution has failed to prove beyond reasonable doubt that the respondent had demanded an amount of Rs.25/- by way of illegal gratification from the complainant on May 3, 1985. Again, demand of Rs.25/- on May 9, 1985 is also not proved by the prosecution as required by law. It is the case of the complainant that on May 9, 1985 the respondent had come to his shop and instructed him to bring money in his office next day in the afternoon. The evidence led by the prosecution in no uncertain terms discloses that when the raiding party had gone to the office of the respondent in the afternoon, he was not present and had come to the office at about 3.00 p.m. If the respondent had demanded the amount as alleged by the prosecution, in normal course of conduct the respondent would have been physically found present in his office when raiding party had gone there. Again it is difficult to understand as to why the respondent should agree to accept the amount of illegal gratification in the office more particularly when he had been to the shop of the complainant on two occasions. The learned Special Judge has given cogent and convincing reasons for disbelieving the prosecution case that the respondent demanded an amount of Rs.25/- by way of illegal gratification from the complainant on May 9, 1985. Those reasons are to be found in paras 14 to 17 of the impugned judgment. On appreciation of evidence led by the prosecution, we are of the view that the finding recorded by the learned Special Judge to the effect that the prosecution has failed to prove beyond reasonable doubt that the respondent had demanded an amount of Rs.25/- by way of illegal gratification from the complainant on May 9, 1985, is eminently just and proper and needs no interference by this Court in the present appeal.

11. Once the foundation of demand becomes not only doubtful, but is practically destroyed, then this must have impact on the other circumstance because one circumstance in such case always unfolds other and the impact of one on the other cannot be ignored. After taking into consideration the entire evidence of panch witness, the learned Judge has rightly concluded that

Police Inspector Mr. Manjaria failed to secure services of an independent panch witness. The evidence of panch witness makes it abundantly clear that his services were requisitioned through his employer Bhikhubhai Shantibhai, who was present all throughout in Court premises till the conclusion of the case. In fact, the learned Judge has recorded the finding that Bhikhubhai Shantibhai, employer of panch Govindbhai Solanki was sitting with witnesses all throughout. After appreciating the evidence of P.I. Mr. Manjaria and panch witness Govindbhai Solanki, the learned Special Judge has come to the conclusion that panch Govindbhai Solanki was picked up by P.I. Mr. Manjaria at the instance of Mr. Pathak, who was owner of Kamal Garage. The panch witness has given inconsistent evidence as to how his services came to be requisitioned by P.I. Mr. Manjaria as one of the panch witnesses. The excuse given by him that he had left his usual place of work because he wanted to see ailing mother of Accountant, and on way, Mr. Manjaria asked him to be a panch witness, is found to be false, as mother of Accountant had expired in the year 1982. The learned Judge who had advantage of observing demeanour of the witness has noted that panch witness has no regard for truth and his evidence does not inspire confidence of the Court at all. The learned Special Judge has critically examined sworn testimony of panch witness and we see no reason to differ from the conclusion arrived at by the learned Judge to the effect that panch witness has no regard for truth.

12. The acceptance of Rs.25/- by the respondent is not proved by the prosecution beyond reasonable doubt. It is an admitted fact that at the time when the respondent is alleged to have accepted Rs.25/-, the complainant was accompanied by panch Govindbhai Solanki. However, prosecution evidence does not indicate that any inquiry was made by the respondent about presence of panch Govindbhai Solanki. The evidence of three witnesses examined on behalf of the prosecution proves beyond reasonable doubt that at the time when the respondent is alleged to have accepted Rs.25/- from the complainant, 6 to 7 other employees were also discharging duties in the Office. It is not probable that the respondent would accept amount by way of illegal gratification in presence of a stranger and his colleagues, unless he is a die hard corrupt officer. The prosecution has not brought evidence on record of the case to indicate that the respondent is a die hard corrupt officer or that he has acquired properties disproportionate to his income. Moreover, the evidence of panch witness clearly indicates that thumbs of the

respondent were not found to have been stained with anthracene powder when his hands and clothes were seen in light of ultra violet lamp. If the respondent had accepted the amount of Rs.25/- by way of illegal gratification from the complainant and had placed them in his pocket as alleged by the prosecution, his thumbs would have been found to have been stained with anthracene powder. The investigating officer has admitted that if anthracene powder had been detected on all the fingers, the said fact would have been mentioned without fail in the panchnama, which is a contemporary document and which according to the prosecution was prepared immediately after the raid was carried out. However, it is to be noted that in the panchnama there is no mention that all the fingers of the hands of accused were found to have been stained with anthracene powder. Under the circumstances, the plea raised by the respondent in his statement under section 313 of the Code of Criminal Procedure to the effect that the complainant had attempted to thrust tainted notes in the pocket of his bushirt on the pretext of giving tip and thereafter signalled the raiding party, becomes probable. At this stage, it is relevant to note the antecedents of the complainant. The complainant during his cross-examination, has admitted that he had not paid the amount due and though the electricity supply was disconnected for non-payment of dues, he had restored the electricity connection illegally and was using the same. It is true that in a trape case, complainant need not be corroborated, but the weight to be attached to his evidence will depend on his character, his standing, his position, the circumstances under which he made grievance before the authority and how he has fared in the witness box. Having regard to the character and bad antecedents of the complainant, it cannot be said that any error is committed by the learned Special Judge in disbelieving the case of the prosecution. As the evidence of the complainant and panch witness is liable to be discarded as untruthful, testimony of P.I. Mr. Manjaria does not help the prosecution case and the respondent cannot be convicted on the sole testimony of P.I. Mr. Manjaria because his testimony is totally inconsistent with the testimony of panch witnesses. As observed earlier, before conducting raid, he should have requisitioned services of independent panch witness, but he failed to secure presence of such independent witnesses. Though thumbs of the respondent were not found to have been stained with anthracene powder, he deposed in his evidence that the thumbs of hands of the respondent were stained with anthracene powder. Having regard to the nature of evidence, learned Judge has rightly come to the



conclusion that it is hazardous to place reliance on his testimony. As the prosecution has not proved acceptance of Rs.25/- by the respondent as illegal gratification, no presumption would arise in favour of the prosecution. On the facts and in the circumstances of the case, we are of the opinion that the conclusions arrived at by the learned Special Judge are based on correct appreciation of evidence led by the prosecution and it is not possible for this Court to come to the conclusion that appreciation of evidence by the learned Special Judge is erroneous in any manner.

13. This is an acquittal appeal in which the Court would be slow to interfere with the order of acquittal. The infirmities in the prosecution case go to the root of the matter and strikes a fatal blow to the prosecution case. In such a case it would not be safe to set aside the order of acquittal relying on the oral evidence of witnesses, particularly when the evidence has not inspired confidence of learned Special Judge who had opportunity to mark demeanour of witnesses. As we are in general agreement with the view expressed by the learned Judge, we do not think it necessary to either reiterate the evidence of prosecution witnesses or to restate the reasons for acquittal given by the Trial Court, and in our view, the expression of general agreement with the view taken by the learned Judge would be sufficient in the facts of the present case. This is so, in view of the decisions rendered by the Supreme Court in the cases of (1) Girija Nandini Devi vs. Bigendra Chaudhari, A.I.R. 1967 S.C. 1124, and (2) State of Karnataka vs. Hema Reddy and Another, A.I.R. 1981 S.C. 1417. On overall appreciation of the evidence, we are satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the respondent. Suffice to say that the learned Judge has given cogent and convincing reasons for acquitting the respondent and the learned Additional Public Prosecutor has failed to dislodge the reasons given by the learned Judge in order to convince us to take the view contrary to one already taken by the learned Judge.

For the foregoing reasons, we do not see any merits in the appeal. The appeal, therefore, fails and is dismissed. Muddamal is to be disposed of in terms of direction given by the learned Special Judge in the impugned judgment.

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